

COMPREHENSIVE AGREEMENT

by and between

THE BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA,

and

WESLEY HAMEL LEWINSVILLE LLC, as Developer

and

WESLEY LEWINSVILLE LIMITED PARTNERSHIP, as Tenant

**8.65 ACRES OF LAND IN MCLEAN, VIRGINIA
FAIRFAX COUNTY, VIRGINIA
TAX MAP #0303 01 0042**

Dated as of _____, 2015

COMPREHENSIVE AGREEMENT

THIS **COMPREHENSIVE AGREEMENT** (this "Agreement") is made and entered into as of this ____ day of _____, 2015 (the "Agreement Date"), by and among the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, acting in its proprietary capacity and not in its governmental or regulatory capacity (the "County"), **WESLEY HAMEL LEWINSVILLE LLC**, a Virginia limited liability company ("Developer") and **WESLEY LEWINSVILLE LIMITED PARTNERSHIP**, a Virginia limited partnership ("Tenant"), and together with Developer and the County, collectively, the "Parties").

RECITALS:

R-1. The County is the fee simple owner of a 8.65 acre tract of land in McLean, Virginia, having an address located at 1609 Great Falls Street, McLean, Virginia, and further described as Fairfax County Tax Map ID number 0303 01 0042, upon which a senior center and day care center are built and which are commonly referred to as the Lewinsville Senior Center and Day Care Center (the "Property").

R-2. The Property currently consists of a twenty-two (22) unit senior living facility, an adult day care center, two separate child day care centers and adjacent athletic fields.

R-3. On February 9, 2004, the County, in its regulatory capacity, approved Special Exception Amendment SEA 94-D-002 and 2232 D-03-09 (collectively, the "2004 Special Exception Amendment"), which permitted the construction of a redesigned 52,500 square foot building (the "Originally Contemplated Senior Residential Facility"), in addition to the existing 38,355 square foot Lewinsville Senior Center and Daycare Center (the "Existing Senior and Daycare Center"). The Originally Contemplated Senior Residential Facility, if constructed, would have provided for a sixty (60) bed assisted living facility with commercial kitchen and dining facility. Additionally, the 2004 Special Exception Amendment provided: (i) that the facilities in the adult day care center within the Existing Senior and Daycare Center were to expand to accommodate an increase from sixty-five (65) to eighty (80) adults; and (ii) that the senior center within the Existing Senior and Daycare Center was to expand to accommodate an increase from seventy-five (75) to eighty (80) adults and provide a family respite center to serve seniors with Alzheimer's disease.

R-4. Pursuant to that certain Request for Proposal Number RFP-2000000263, issued May 14, 2012 (the "RFP"), issued in accordance with the provisions granted by Virginia's Public-Private Education Facilities and Infrastructure Act of 2002 ("PPEA"), Va. Code § 56-575.1, *et seq* (2012), the County desired to enter into a contract with a developer to: (i) act as agent for the County to take the necessary steps to file an amendment to the 2004 Special Exception Amendment that allows for the development described in (ii) and (iii) hereafter; (ii) raze the Existing Senior and Daycare Center and

design and construct a replacement facility (hereafter referred to as, the **“Senior and Daycare Center”**) on the Property to be owned and operated by the County; and (iii) design, develop, construct own and operate, as provided herein, a senior residential facility (hereafter referred to as the **“RFP Senior Independent Living Residence”**) instead of the Originally Contemplated Senior Residential Facility, which will contain up to eighty (80) affordable senior units on the Property under a long term ground lease from the County.

R-5. The RFP further provided that the County reserves the right to select a developer to design, develop and construct: (i) the infrastructure (including, without limitation, roads, drive aisles, parking, curb cuts, sewer, electricity and other utilities from the closest point of public access to the Property and storm water management facilities) for the entire Property (the **“Infrastructure Improvements”**); (ii) the Senior and Daycare Center; (iii) the RFP Senior Independent Living Residence; or (iv) any combination of (i), (ii) and (iii) herein. The term **“Infrastructure Improvements,”** when referencing the portion of the Property that is allocated for the Senior and Daycare Center, means those improvements which are necessary to make that portion of the Property a **“pad ready site”** for the construction of the Senior and Daycare Center and the restoration of the sports fields on the Property.

R-6. Developer submitted a response to the RFP (as amended, the **“Developer Response”**) which was determined by the County to be the most responsive to the RFP. The Developer Response proposed up to eighty-two (82) affordable senior units (the **“Senior Independent Living Residence”**). The Developer Response further provided that Tenant would enter into a long term ground lease and construct, own, operate and manage the Senior Independent Living Residence on a portion of the Property pursuant to the Ground Lease (defined below) with the County.

R-7. The (a) land entitlement, design, development and construction of the Infrastructure Improvements, the Senior and Daycare Center and the Senior Independent Living Residence on the Property, and (b) leasing of a portion of the Property under the Ground Lease and ownership, operation and management of the Senior Independent Living Residence; is collectively referred to as the **“Day Care Centers and Senior Residence Project”**.

R-8. In furtherance of the Day Care Centers and Senior Residence Project, the County and Developer entered into that certain Interim Agreement dated July 30, 2014 (the **“Interim Agreement”**) in order to proceed with the design- and entitlement-related work on the Property.

R-9. The Parties desire to enter into this Agreement to provide for (a) Developer to (i) raze the Existing Senior and Daycare Center, and (ii) design, develop and construct the Infrastructure Improvements and undertake certain other actions as set forth in the Infrastructure Development Agreement (defined below); and (b) Tenant to construct, own, operate and manage the Senior Independent Living Residence pursuant to the terms of the Ground Lease.

R-10. The Parties have now negotiated a comprehensive agreement consistent with the PPEA, the RFP, and other laws, the terms and conditions of which are set forth herein.

R-11. Having considered this Agreement and other information, the County, in its regulatory capacity, has determined that the Project be completed pursuant to this Agreement, and that this Agreement and Project serves the public purpose of the PPEA under the criteria of Va. Code § 56-575.4C.

NOW, THEREFORE, for and in consideration of the mutual promises, conditions and covenants herein set forth, the Parties agree as follows:

1. The foregoing recitals are hereby incorporated by this reference as if fully set forth herein.

2. The Parties agree that the Project shall be constructed, operated, maintained, managed, leased (as applicable), and owned (as applicable) pursuant to, among other things, written agreements to be executed by one or more of the County, Developer, Tenant or their respective subsidiaries and affiliates, as applicable, including, without limitation, the following written agreements, and any amendments to those agreements:

- a. Infrastructure Development Agreement, by and between the County and Developer, in substantially the form which is attached hereto as **Exhibit A** (the "Infrastructure Development Agreement");
- b. Option to Lease, by and between the County and Tenant, in substantially the form which is attached hereto as **Exhibit B** (the "Option to Lease"); and
- c. Deed of Lease, by and between the County, as landlord, and Tenant, or its subsidiaries and affiliates, in substantially the form which is attached hereto as **Exhibit C** (the "Ground Lease").

3. The Parties also agree as follows:

- a. This Agreement and the exhibits attached hereto and forming a part hereof set forth all the covenants, promises, agreements, conditions and understandings of the Parties hereto, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon any party unless reduced to writing and signed by all of the Parties affected.
- b. This Agreement shall be governed by and construed under the laws of the Commonwealth of Virginia. Should any provision of this Agreement require judicial interpretation, the Parties hereby agree and stipulate that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by

reason of any rule or conclusion of law that a document should be construed more strictly against the party who itself or through its agents prepared the same, it being agreed that all Parties hereto have participated in the preparation of this Agreement and that each party had full opportunity to consult legal counsel of its choice before its execution of this Agreement.

- c. This Agreement may be executed in two or more counterparts, each of which shall constitute one and the same instrument. Delivery by telecopier, facsimile, or electronic mail of an executed counterpart of a signature page (in any electronic format, including, without limitation, .TIFF, .JPG, or Adobe Corporation's Portable Document Format (.PDF)) shall be deemed an original signature page and fully effective as such.
- d. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, there shall be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible in order to be legal, valid and enforceable.
- e. Whenever the term, the "County," is used in this Agreement, unless the term is followed by, "in its governmental capacity," "in its regulatory capacity," or words of similar import, the term means, "the County, in its proprietary capacity."

(Remainder of Page Blank; Signatures Follow)

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above-written.

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA, a political subdivision of the Commonwealth of Virginia, in its proprietary capacity

By: _____
Name: _____
Title: _____

DEVELOPER:

WESLEY HAMEL LEWINSVILLE LLC,
a Virginia limited liability company

By: _____
Name: _____
Title: _____

TENANT:

WESLEY LEWINSVILLE LIMITED PARTNERSHIP,
a Virginia limited partnership

By: _____
Name: _____
Title: _____

Exhibit A

Form of Infrastructure Development Agreement

(See Attached)

Exhibit B

Form of Option to Lease

(See Attached)

Exhibit C

Form of Ground Lease

(See Attached)